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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,901	02/09/2001	Charlene A. Boehm	46607-248184	6758

7590 03/16/2006

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EXAMINER	
MORAN, MARJORIE A	

ART UNIT	PAPER NUMBER
1631	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/780,901	**Applicant(s)** BOEHM, CHARLENE A.
	Examiner Marjorie A. Moran	**Art Unit** 1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,2 and 4-14*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: _____.

Two Interview Summaries Attached.

Marjorie A. Moran 3/9/06

Marjorie A. Moran
Primary Examiner
Art Unit: 1631

Continuation of 3. NOTE: the combination of "genomic material which causes disease, or is associated with a disease-causing pathogen" of claim 1 and "stimulating" genomic material of introduces a new issue which is also new matter . Also, determining a "first" therapeutic frequency, as newly recited in claim 1, is also a new issue which may be new matter.

Continuation of 11. does NOT place the application in condition for allowance because: As the amendment has not been entered, all rejections are maintained. However, in the interests of advancing prosecution, the following observations with regard to the proposed amendment are made;
limitations with regard to genomic material which causes disease, or is associated with a disease-causing pathogen are supported by the originally filed specification and are NOT new matter;
determining a length of a genomic material using the known spacing between the number of base pairs or bases, as in proposed claim 2, serves to further clarify the step and are not new matter.
The term "first therapeutic resoanant frequency" in paragraph four of proposed claim 1 is possibly new matter, as the specification only discloses determining a first resonant frequency. As this frequency must then be adjusted using the inventive method in order to become therapeutic (i.e. in order to have any effect, the first chosen frequency must be adjusted for the alteration casued by the medium), it is clear that the first frequency is not, in fact, therapeutic. The examiner suggests removing the term "therapeutic" after "first".
The examiner suggests that the term "disease causing" after "influencing the" in the last paragraph of claim 1 be removed or otherwise amended as this term would, at least, cause unclarity and may be new matter as it is unclear what a "disease-causing...genomic material" IS. However, the phrase "disease-associated genomic material" is clear and supported by the originally filed specification.
The term "unique" with regard to "electrical permittivity" in claim 4 appears to be unnecessary and would introduce an indefiniteness issue.
Original claim 8 did recite "stimulating" a nucleic acid chain, therefore "stimulating the genomic material" in proposed claims 1 and 8 is not new matter. However, proposed claim 1 now limits the genomic material to cause disease, or be associated with a disease-causing pathogen AND limits influencing the genomic material to render a therapeutic or desirable effect to the host or system. Those of skill in the art would recognize that it is unlikely that "stimulating" a pathogen-associated genomic material would cause a DESIRABLE effect on a host, therefore the combiantion of limitations introduce in the proposed amendment are confusing and may not be enabled.